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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/001,558	10/24/2001	Shimei Fan	J6650(C)	7685

201 7590 05/21/2003

UNILEVER
PATENT DEPARTMENT
45 RIVER ROAD
EDGEWATER, NJ 07020

EXAMINER

BAHAR, MOJDEH

ART UNIT	PAPER NUMBER
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1617

DATE MAILED: 05/21/2003

6

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/001,558

Applicant(s)

FAN ET AL.

Examiner

Mojdeh Bahar

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 January 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) 23-25 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Applicant's response to the first office action of October 1, 2002 is acknowledged.

Applicant traverses the restriction requirement stating that because the three groups set forth in the restriction have the same classification, the search for all three groups is not burdensome.

Note that as set forth in the restriction requirement, groups II and III have different functions.

Note additionally that the search for the employment of one composition a claimed method is not coextensive with the search for the composition itself.

Applicant's remarks regarding the examination of both product (Group I) and process groups (Group II-III) claims in the same application have been considered but are not persuasive. Please note that the restriction requirement between the product and process of use herein is deemed proper as distinctness among these inventions has been shown under MPEP 806.05(h) in the restriction requirement mailed October 1, 2002. Note that the search is not limited to patent files.

Because the considerations as to patentability are individual to each Group herein and the burden of search for all inventions is undue, as discussed herein and in the restriction requirement, the restriction requirement is maintained.

The requirement is still deemed proper and is therefore made FINAL.

Claims 23-25 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a non-elected invention. Applicant timely traversed the restriction requirement in Paper No. 5.

This application contains claims 23-25 drawn to an invention nonelected with traverse in Paper No. 5. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reid et al. (USPN 5,085,857).

Reid et al. (USPN 5,085,857) teaches an aqueous shampoo composition comprising, in addition to water from 2-40% by weight of a surfactant chosen from anionic, nonionic or amphoteric surfactants or mixtures thereof, from 0.01% to 3% by weight of cationic conditioning polymer which is a cationic derivative of guar gum, from 0.01 to 10% by weight of an insoluble, non-volatile silicone, present as emulsified particles with an average particle size of less than 2 micrometers, see col. 1 line 67-col.2, line 8. Suitable anionic surfactants are alkyl sulfates, alkyl

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ether sulfates, alkaryl sulfonates, alkyl succinates, alkyl sulfosuccinates, N-alkoyl sarcosinates, alkyl phosphates, alkyl ether phosphates, alkyl ether carboxylates, and alpha-olefin sulfonates, see col. 2, lines 24-36. The amphoteric surfactants suitable for use in the composition of the invention are alkyl amine oxides, alkyl betaines, alkyl amidopropyl betaines, alkyl sulfobetaines, alkyl glycinate, alkyl carboxyglycinates, alkyl amphopropionates, alkyl amidopropyl hydroxysultaines, acyl taurates and acyl glutamates wherein the alkyl and acyl groups have from 8 to 10 carbon atoms. Examples include lauryl amine oxide, cocodimethyl sulfopropyl betaine and preferably lauryl betaine, cocamidopropyl betaine and sodium cocamphopropionate, see col.2, lines 58-68. The non-ionic surfactants suitable for use in the composition of Reid et al. are condensation products of aliphatic (C8-C18) primary or secondary linear or branched chain alcohols or phenols with alkylene oxides, usually ethylene oxide and generally 6-30 EO. Other suitable surfactants are mono or di alkyl alkanolamides or alkyl polyglucosides. Examples include coco mono isopropanolamide, and cocodiglucoside, see col. 2, lines 47-57. Reid et al. further teaches that the cationic conditioning polymer is a cationic derivative of guar gum, e.g., hydroxypropyl trimonium chloride, see col.3, lines 5-28. Reid et al also teaches that the shampoo composition of its invention also comprises an insoluble non-volatile silicone which may be one or more polyalkyl siloxanes, polyalkylaryl siloxanes or mixtures thereof, specific examples include polydimethyl siloxane, see col. 3 line 31-68. Reid et al. finally teaches that its shampoo composition may also include perfumes, dyes, coloring agents, viscosity modifiers, and herb extracts, see col. 5, lines 11-22, see also claims 1-7.

Reid et al. does not teach the particular percentages of the co-surfactant herein.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to employ co-surfactants in the percentages claimed herein.

One of ordinary skill in the art would have been motivated to employ co-surfactants in the percentages claimed herein because the co-surfactants are known to be useful in shampoo composition and optimization of amounts in within the purview of the Skilled Artisan.

Response to Arguments

Applicant's arguments filed January 6, 2003 have been fully considered but they are not persuasive. Applicant first argues that the non-ionic surfactants taught in the prior art reference, Reid, exhibit a degree of ethoxylation excluded by the instant claims. Note that Reid's teaching is broader than that stated by the applicant in his response on page 3. The non-ionic surfactants suitable for use in the composition of Reid et al. are condensation products of aliphatic (C8-C18) primary or secondary linear or branched chain alcohols or phenols with alkylene oxides, **usually ethylene oxide** and generally 6-30 EO. Although Reid specifically recites 6-30 EO, it teaches EO broadly. Applicant then argues that example 1 of Reid includes the non-ionic surfactant excluded by the instant claims and thus Reid teaches away from the instant invention. It is well established patent law that disclosed examples and preferred embodiments do not constitute a teaching away from a broader disclosure or non-preferred embodiments, *In re Susi*, 169 USPQ 423 (CCPA 1971).

Furthermore in column 9, lines 15-31, Reid teaches non-ionic emulsifiers (surfactants) such as alkylphenol ethoxylates nEO (where n is 1-50), alcohol ethoxylate nEO (where n is 1-50) and ester ethoxylates.

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Other suitable surfactants specifically taught by Reid are mono or di alkyl alkanolamides or alkyl polyglucosides. Examples include coco mono isopropanolamide, and cocodigluconide, see col. 2, lines 47-57. Note that Reid specifically teaches some of the non-ionic surfactants claimed herein, e.g., instant claim 9-13, for example.

Applicant then argues that Reid does not teach the particular weight percentage of co-surfactant herein and its optimization would have not been obvious. Applicant further states that the particular weight percentages herein have yielded unexpected results. Applicants aver unexpected benefits residing in the claimed subject matter, yet fail to set forth evidence substantiating this belief. Evidence as to unexpected benefits must be "clear and convincing" *In re Lohr*, 137 USPQ 548 (CCPA 1963), and be of a scope reasonably commensurate with the scope of the subject matter claimed, *In re Linder*, 173 USPQ 356 (CCPA 1972). The data provided by Applicants is not reasonably commensurate in scope with the instant claims. Absent claims commensurate with the showing of unexpected benefits, or a showing reasonably commensurate with the instant claims, such claims remain properly rejected under 35 USC 103.

Applicant finally argues that Reid does not teach that its premix is turbid. Note that claim 2 does not teach the claimed premix is turbid, but that when the ratio of premix to water is 1:10 a turbid mixture is formed. Note that as claimed the ratio of premix to water is not necessarily 1:10.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO

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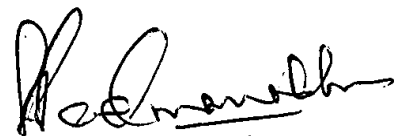
MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mojdeh Bahar whose telephone number is (703) 305-1007. The examiner can normally be reached on (703) 305-1007 from Monday to Friday from 9:00 a.m. to 5:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan, can be reached on (703) 305-1877. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-4556.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

Mojdeh Bahar
Patent Examiner
May 13, 2003



SREENI PADMANABHAN
PRIMARY EXAMINER

5/18/03